

Louisiana Law Review

Volume 14 | Number 2

February 1954

HOLMES-LASKI LETTERS: THE
CORRESPONDENCE OF MR. JUSTICE
HOLMES AND HAROLD J. LASKI, 1916-1935,
edited by Mark DeWolfe Howe. Harvard
University Press, Cambridge, 1953. Pp. xvi, 1650. 2
vols. \$12.50.

Albert S. Abel

Repository Citation

Albert S. Abel, *HOLMES-LASKI LETTERS: THE CORRESPONDENCE OF MR. JUSTICE HOLMES AND HAROLD J. LASKI, 1916-1935*, edited by Mark DeWolfe Howe. Harvard University Press, Cambridge, 1953. Pp. xvi, 1650. 2 vols. \$12.50., 14 La. L. Rev. (1954)

Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol14/iss2/16>

This Book Review is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact kreed25@lsu.edu.

demagogues occasionally frighten men of good will in all sections of the country. Chief Justice Vanderbilt has presented well one side of the argument on governmental power, federal-state relations, and the separation of powers, but he has presented only one side. There is another side founded not on lurid data taken from reports of the Tax Foundation and Fortune magazine that is equally important. Men of the prestige of Chief Justice Vanderbilt could render better service if they concerned themselves with the whole picture of government. What is needed now is not an indiscriminating assault on governmental policies but an understanding of them and of the political, economic, and social environment which constitutes the crucible in which public policy is formed.

*Robert J. Harris**

HOLMES-LASKI LETTERS: THE CORRESPONDENCE OF MR. JUSTICE HOLMES AND HAROLD J. LASKI, 1916-1935, edited by Mark DeWolfe Howe. Harvard University Press, Cambridge, 1953. Pp. xvi, 1650. 2 vols. \$12.50.

How does one review a collection of letters?

As one reviews a life, or, rather, where both sides of the correspondence are published, a pair of lives. When we read not mere epistolary essays composed with a view to publication as the face is composed with a view to a studio portrait, but true letters, that is what is laid bare to us. Not quite that, of course, for in letters, as in other personal intercourse, indeed perhaps in most conscious introspection, not all our selves have speaking roles—only those whom we believe, or believe that those with whom we are dealing believe have appropriate parts in the cast.

To change metaphors, letters at best are no chart by which we can circumnavigate a personality; but, if ample in volume and relaxed in tone, they approach it as nearly as can be done. If they reveal small or even middle-sized islands, a description of the landmarks and coastal features, *alias* a review of the letters, may call attention to items of interest, beauty, or amaze but is still a fairly simple undertaking. With continental masses it is otherwise. With them one cannot in reasonable compass

* Professor and Head, Department of Government, Louisiana State University.

render an account which is comprehensive, possibly not one which is comprehensible. Much will inevitably remain which was not even comprehended. But the fascination of the subject is as that of the Americas to the sixteenth century seafarers. So it is with these letters. Vast in volume, breathtakingly discursive and unaffected, interchanged between two of the farthest ranging and most intricate individuals of our time, they present an Elizabethan challenge compelling one to explore and try to report, even though aware beforehand that he will fall short in his trying.

I write this as a lawyer and will be read by lawyers, if at all. It is fitting, therefore, that comment be directed first to the more specifically professional content of the letters. Even so confined, they possess an interest comparable to that which (I hope) would exist if one can imagine an intimate personal friendship to have existed between, say, John Marshall and Jeremy Bentham and to have resulted in an accumulation of letters stating freely and at large their observations on contemporary law and lawyers. No new positive law would, of course, emerge but the perspectives on contemporary legal materials and procedures would be invaluable. So with these letters. Between them and often in common, the writers were acquainted with nearly every outstanding legal personality and with every significant legal development of their own time and of the recent past in both England and America (and many on the continent of Europe) and commented on them in dizzying profusion. As generally throughout this review, I am compelled to make the severest selection by way of illustration, reflecting my own priorities of interest but not the infinite variety of their legal discourse which contains something for every taste, so it be truly professional.

American lawyers, sharers of Holmes's milieu and controlled by the decisions of the august tribunal of which he was long a member, will probably be more interested in his remarks. He tells us about the personalities of his colleagues—Brandeis, developing from an apparently agreeable stranger to a greatly cherished associate but always "the man of economics" and up to the last appearing to feel no need for sympathy or support as Holmes sometimes did; Taft, the deft judicial administrator, the kindhearted man, the chief justice somewhat gifted as "justice" but more gifted as "chief"; cantankerous McReynolds, unbrotherly in his attitude toward Clarke and initially toward Brandeis, an irritating procrastinator in opinion routing, but sweet fruited

within his bitter rind; Stone, for whom Holmes expresses unreserved liking and respect; Hughes, a favorite colleague who should have been made chief when White was and probably was not on political grounds; and White himself, fitter for a senator than for a judge. But it is Brandeis who keeps recurring—Brandeis teasing Holmes to diligent drudgery in statistics and other distasteful data, Brandeis being teased by Holmes into eschewing footnotes and brief-writing in his opinions and into tidying them up all round, Brandeis losing faith in the Sherman Act. Beyond personalities, Holmes contributes substantially to the scant stock of printed information about the operations of the Court as a body corporate. We are made to realize by his reiteration the wearying burden of the incessant certioraris. There is reference to the specialisms existing among the justices and their utility in such of the more esoteric branches of law as patents, admiralty, and public lands, which should dispel notions of the judges being either nine faceless old men or nine erratic bundles of socio-economically charged emotion. There are observations as to the use and abuse of oral argument by counsel which may profitably be pondered by those whose practice takes them before appellate courts. And there is of course reference upon reference to particular cases pending or past which in many instances add enough to our knowledge of the context and the course of deliberation that any one interested in a given case should consider and occasionally might even cite this additional information as bearing on what the court decided and what it advisedly refrained from deciding. Note, for instance, Holmes's explanation of what he had in mind in those much quoted expressions, the "average reciprocity of advantage" and the "brooding omnipresence." All this, of course, is basically reporting though more or less mixed with editorializing. Holmes's subjective reactions to judgecraft as a participant observer are quite as valuable and perhaps more fascinating. Some, like his aversion to public utility rate cases, are special to him and aspects of his total personality. His appreciation of the advantage of dissents over majority opinions for the accurate delineation of one's own sentiments while as valid is perhaps not as fresh a thought today as when it was written: but many will be surprised at his dislike for the character or the reputation of a dissenter and his perceptive remarks on the accommodating spirit in which one should approach the relation of colleagueship. It becomes plain that he dissented with the utmost reluctance and only because, God helping him,

he could do no other. His repeated declaration that almost invariably the resolution of legal issues was easy, that the hard part was the formulation of the appropriate expression of the decision, also sounds odd to us who have been repeatedly charmed by his felicitous phrasing which seems so effortless. But we are back in the treasurably familiar when we see him inveighing against "police power" and "dedicated to a public use" as analytic soporifics.

Along with these job-oriented commentaries come other valuable morsels. Some absorption in the task at hand is indicated as by the suggestion that it was not until 1930 that Holmes first met Cardozo but only the physical and never the intellectual range was restricted. How *The Common Law* came to be conceived and written is explained. Why the *brouhaha* about the American Law Institute and its projected restatements of the law seems excessive is pithily stated. Canny observations on legal education ("I doubted if most youngsters didn't get all the jurisprudence they needed if they studied law under a man with general ideas") and on "young lawyers . . . the worse for their liberal interests. It made them unwilling to tackle the details" re-enforce the famous succession of law clerks in showing awareness of and concern for the future of the bar embodied in unfledged and fledgeling lawyers. Reasoned appraisals of the Sacco-Vanzetti case (as an exemplar of bias in criminal trials) and of the validity of the objections to considering political qualifications in making judicial appointments seem timelessly pertinent. On the first of these questions he disagreed sharply, on the second firmly with Laski's position. In both, my own inclination is to agree with Holmes; but no one can presume to have an informed position on either unless he has noted and honestly weighed the considerations which they respectively develop.

For even the purely legal contribution was not unilateral. By personal acquaintance, by hearsay, or by reading (the proportionate contributions are not ascertainable), Laski accumulated a tremendous fund of first-class gossip stretching back nearly a century about the English bench and bar, which he relayed to Holmes. The repertory, appropriately transferred to local legal dignitaries, would make an undying reputation for any bar association wit and toastmaster. It illuminates wonderfully the course of legal development in the ancient home of the common law. If Laski's revelations relative to the English legal scene are less significant to us than those of Holmes as to

its American counterpart, it is because we are American, not English, lawyers. For that matter, Laski occasionally sheds new light or new darkness on phases of American legal development. For instance, I had long reconciled Dean Pound's later statements about administrative law with his earlier attitudes to my own satisfaction by noting the change in tone as occurring after his experience on the Wickersham Commission and attributing it to that experience. Laski reveals Pound's antipathy for it as early as 1919. It is also interesting to find Laski outlining back in 1925 the rudiments of what has variously come to be called the "Missouri plan" or the "American Bar Association plan" of judicial appointment. He participated less in professional activity, so he necessarily brings us less testimony of a participant than does Holmes, but even that is not lacking. His accounts of the activities of the Committee on Ministers' Powers are relevant collateral reading in connection with its famous Report which in turn is relevant collateral reading for American lawyers. We learn something also of his experience as a member of the Industrial Court but, that body being without an American equivalent, the prime importance is to show how fortunate it was by and large that Laski was not more of a participant in professional affairs. The intense distaste to which he testifies for sitting "eight or nine hours without making any observation which indicates your point of view" is eloquent of his lack of the judicial temperament. He seems to have been still worse miscast as a jurymen. His picture of himself in that capacity, elaborately explaining the judge's instructions to his fellow jurors, patiently weighing and analyzing the evidence for them, and ultimately outvoted eleven to one since they to his disgust permitted themselves to be guided by their aggregate impressions is immensely funny—unless one chances to think of getting such a jurymen himself when it becomes frightening. What is chiefly important is the demonstration of how a profound and genuine comprehension of the history and fundamental postulates of the law may be combined with utter lack of understanding of the behavior of such elementary legal institutions as the jury.

There is so much, then, within the lawyer's specialty in these letters that they repay reading for that alone; but it is the very much more beyond the lawyer's specialty that made them for me the most exciting and satisfying reading of the past year, indeed the past several years. Note that I do not say

non-legal matters. I believe that an understanding of the personalities and the thought patterns of people is the first essential in the lawyer's art, much more important than any or all of our technological apparatus. More than in any case since Mme. de Sévigné wrote, one may observe through these letters the living structure of personality; but these are more interesting because the personalities disclosed are more relevant to our time and more complex and imposing of themselves.

Some have deplored their publication, clucking at Laski as simply an unexplainable low taste on Holmes's part from which we might best avert our faces. Though I think I understand the fashion of thought that has made it orthodox to sneer at Laski without quite venturing to assault one who had both Holmes's renown and Holmes's status (and even there trial balloons appear), the suggestion strikes me as utter rot. Wise men may not always pick their friends wisely; but the fact they made the choice gives probable cause for believing that some deserts exist. In any case, they will seldom be foolish enough to channel their regard according to what is socially correct. Laski had a richly patterned temperament and a brilliant mind. If he were unworthy of Holmes's friendship, because he added up to less than a Holmes, then Holmes is to be allowed no friends. If he was deserving of Holmes's friendship, the publication of the records of that friendship strikes me as not only unobjectionable but highly desirable. But this is bootless controversy. Say these are letters from John Doe to Richard Roe, read them without preconceptions about their writers, and then return the verdict whether they ought to have been written or published.

The incompatibility of Holmes and Laski in everything except matters intellectual is striking. But what a very large exception! And how wonderfully congenial they were in that respect!

The daily prints and monthly magazines, which from their frequency of publication get the first whack at book review readers, have dwelt sufficiently on what voracious readers both correspondents were. Indeed they were. I myself am commonly reputed an extensive reader and complacently confess the soft impeachment; but the mass, variety, and level of their reading leaves me feeling a near illiterate. The letters in the aggregate constitute virtually an impressionistic survey of the world's literary remains. Their common attribute of writing style and

wit has attracted less comment. Both were aphorists with the subtle difference that Holmes coined epigrams and Laski maxims. A few quotations will illustrate the quality of their respective styles. First, from Holmes: ". . . the joy of life consists in the neglect of opportunities"; "He who makes the most of himself doesn't make much"; "The means by which the inevitable comes to pass is striving"; "History has to be rewritten because history is the selection of those threads of causes or antecedents that we are interested in—and the interest changes every fifty years"; "He was in fashion once, therefore he filled a need"; "Hell is full of heroes." Now Laski: "Liberty seems to me to be the atmosphere which restrains the ruler and encourages the initiative of the subject"; "*De mortuis nil nisi bunkum*"; ". . . the big man in each age is the man who asks the new questions it is in a position to answer if asked"; "The past is only useful insofar as it aids us to be genuinely our contemporaries"; ". . . no politician lives more than six or seven months ahead and at least half his time he is talking to convince himself"; "All statesmanship is, after all, the power to compromise on inessentials." The bulk corresponds to the sample. Not that either was flawless. Why must both reiterate "*aperçus*" when the plain English of "insights" says the same thing less obtrusively? Why will Laski ejaculate conjointly to God and to Montreal? I do not even share the reviewers' and his own titillation in "the state of resentful coma that they dignify by the name of research." These trifles irritate like a pebble in the shoe.

Yet they were radically dissimilar in almost all save their delight in and their gift for the happy expression of ideas.

In matters esthetic the difference crops out. True, both were lovers of paintings and engravings and seem not to have varied greatly in their judgments on them. But Holmes was indifferent to music, barring a slight interest in opera but rather as drama than as music, while Laski appears to have been fond of it, for which he was at times apologetic. For current light or "trash" reading, Holmes relished humor even when vulgar, while Laski eulogized principally works of more sophistication and commonly a rather shoddy sophistication. On solid works both made solid judgments but very few of the trivia that Laski admired have proved to have any survival value whereas Holmes's preferences are not yet forgotten farces. Flowers and their blooming Holmes loved and often commented on perceptively to Laski although

expressing an awareness that the enthusiasm was unshared. The observation seems just. Laski, too, mentions blossoms admiringly but repeatedly after a reference to them in a Holmes letter has obviously reminded him that he really should pay some attention to these quite worthy objects; and predominantly the objects and terms of his praise are the traditional floral props of English literature. He seems to have seen them derivatively where Holmes looked at them directly, loved the "peonies turned a little with age" and was discontented at the chrysanthemum show in Washington with "the overfed clubmen of blossoms." Nevertheless the younger man was as sensitive to visual beauty as the older. The old Flemish town of Furnes, the landscape of Savoy, a distant view of Mont Blanc, the Queen Anne houses in Richmond Park moved him and he sketched their beauty exquisitely, with the economical charm of Japanese poetry. But the beauty which moved Laski to spontaneous exclamation was characteristically that of a landscape with figures or, at least, an inhabited landscape. His esthetic pleasure in every aspect seems to have been a response to the works of man, whereas Holmes was consistently moved by touches of nature.

I have deliberately entered their personalities through this side door of esthetics because of its remoteness from normal grounds of bias and because of the likelihood that they themselves were largely unconscious of the patterns of response disclosed. To Laski the physical world appealed and had value only in those aspects which are artifacts. This is in line with his avowal of being temperamentally a townsman indifferent to the rural scene and of his lack of interest in any animals except man and man's four-footed satellite, the dog. Laski presupposes a cultural universe—Holmes transcends it.

As to Holmes, the letters no more increase nor perplex our understanding of him than a further gaze at Mount Tacoma does our understanding of it. The shape looms simple, symmetrical, sublime, compelling awe not coaxing acceptance. Biographical details do of course emerge, often interesting, sometimes significant. His memories of Everett, of Melville, of Lieber, of Emerson, of the Jameses and the middle range of Adamses resurrect a child and youth's eye view of New England in its flowering and its Indian summer and his recollection of his grandmother's recollection of the siege of Boston in 1776 recalls an even earlier period of the Republic. He conjures up the boyhood sport of skipping

from ice floe to ice floe and we are in an antique world which knew not TV eyes and Lionel trains. He housekeeps with his bride on packing boxes and the New England of plain living and high thinking arises again before us. He answers the askers of history's irrelevant questions by attributing his appointment to the Supreme Court to one or both of Henry Cabot Lodge *et ux*. This is general background.

It is supplemented by information of larger moment as to the circumstances that shaped the development of his character. The frequency and tone of his references to his father deflate the importance of the father-son conflict that some biographers have so stressed as an influence on him. Though he does deem himself temperamentally his mother's child and though of course the letters offer no direct testimony about the sometime existence of a father-son conflict, any there might have been was mild enough that it had left no scars nor even memories of scars. One who had really been oedipally afflicted would never have alluded to his father with quite the casual collateral acceptance that we find nor express quite his objections to Parrington's evaluation of the elder Holmes. The Civil War etched itself deeply in Holmes's memory, both in its incidents and in its background. Any combat area veteran will agree with him on war's effective teaching of the endurance of boredom and of the varied and often superior merits of those who are not-quite-one's-equals. But the main thing that the experience seems to have contributed was a chastening of the spirit. It is evident that the fever of Abolitionism burned hot within him and that disillusionment with the upshot produced antibodies which were effective against zealotry of any sort for his whole life. An empirical and permissive approach, an avoidance of resounding absolutes was Holmes's most characteristic contribution to the art of judging. The letters leave no room to doubt that if these qualities did not originate in they certainly drew their extraordinary force from his former sentimental participation in the idealism of the Abolitionists.

To the dogmatist of any persuasion, all men are perforce dogmatists, some overtly, some covertly. So, much of the admiration and still more of the detraction of Holmes which has been expressed has been on the mistaken premise that he endorsed views which he was merely willing to endure. Since political and economic orthodoxies do not get themselves judicially challenged, his

official record has thus been interpreted to make him a subscriber to all the heterodoxies he would not suppress.

There could be no more grotesque misconception. He was indeed no pallid neutral. To Laski's suggestion that Frankfurter be designated his official biographer, he replied that the choice was apt "for the law part" but "for the old Yankee" the task should fall to some other Yankee. This is a shrewd recognition of the existence and character of his interwoven professional and temperamental qualities. Whatever else may characterize Yankees, an absence of biases and predilections does not; and Holmes did not conceal or deny this, though he did recognize them for what they were instead of demanding their acceptance as ultimate truths. His impulses were rock-ribbed New England through and through—even to the whimsical clannishness which made him prefer to Darwin's views on evolution and natural selection those of relatives by marriage who happened to be in the scientific line. Will his more vocal adherents embrace or his carping foes reject the sentiment "my country, right or wrong" to which he gave his expressed adherence? And what will either think about his selection of Christ's saying, "Father, forgive them, for they know not what they do" as the profoundest teaching to come down to us from antiquity? He has been treated as merely the legal glossator of John Dewey (I imply nothing either way as to Dewey's merits) but his initial reaction to Dewey's writings (the men seem not to have been personally acquainted) was mildly unfavorable. He did later come to find much in Dewey's thought congenial albeit stated with deplorable opaqueness; but on the evidence of the letters, it is absurd to suppose any relation of discipleship. William James he discusses with a curious detachment which indicates how completely their early attachment had perished and pragmatism he explicitly rejects. He had little faith in programs of reform or "liberal movements" and none at all in socialism or in economic egalitarianism. "Property, friendship, and truth," he said (and he cherished all of them), "have a common root in time. A man is shaped to views long held however uncritically—as the roots of a tree that has grown in the crevices of a rock." Not a practical man himself (he was ignorant of the amount of his own income and as baffled by whether he had paid the correct income tax as any John Doe), he thoroughly admired business men as a class and defended their qualities against Laski's slurs. His was not a pagan abandonment to the joy of the moment; much as he loved reading, he

read "noting how many pages there are and how far I have got." Yet for him not the victor's prize but the quality of the performance was the reward; again and again, he comments unfavorably on those who pant for place or recognition—the chief justiceship, say—and advances his own conviction that the only thing worth having is a sense of doing a job at hand as well as one's talents permit. Speculating on the pleasure of sometime having a few days completely at loose ends, he observes that he always has something to do "and partly from temperament it generally presents itself in the light of a duty." New England smugness had been burned away in the fires of the Civil War and Reconstruction; New England conservatism and the New England conscience persisted. Lovers of stereotypes may perhaps find still more convincing the staunchness with which he declared himself for Coolidge in 1924 and for Hoover in 1928 and again in 1932.

Let me now give myself the lie. I have said that Holmes and Laski were incompatible in everything except matters intellectual. But, for Laski as for Holmes, traditional and conservative values seem to have had the strongest emotional appeal. This does not show when he is expressing his beliefs but it is manifest when he is recording his tastes, which are the truer index. In reading, it is Jane Austen, Trollope, Burke, Adam Smith who have his steady devotion. He is an admirer of John W. Davis. He has a real affection for Birrell and flatly calls Morley "the finest Englishman I have known." Stanley Baldwin is in the other camp politically and his ideas therefore unacceptable but Laski is vastly charmed by him as a person. These affections are not those of a maker-over and yet there can be no doubt that they were sincerely entertained by Laski. Is there not some inconsistency between all this and the Laski we have heard about?

There is indeed. There inevitably is. Laski is a tangle of inconsistencies and the problem is to unravel them. The reviewers have pounded hard on the proposition that he did not, he simply could not read all the books which he reported himself to Holmes as having read (with which Holmes also charged him and which he did not controvert). There has been less attention to the frequency with which he again and again announces the first breathless reading of the same book—*Jill the Reckless* and *The Eustace Diamonds* were oftenest read for the first time. These things have led some to call him bluntly a liar; but, while the terminological inexactitude is evident, I doubt that it is

rightly to be called a lie. Alternatives suggest themselves. Planning to read, skimming preparatory to a reading, the reading itself could each have seemed the occasion for a comment and lack of nice distinctions in their shading not be condemnable. A book might—those named certainly did—commend themselves so strongly to his favor that he wanted to make sure Holmes, too, enjoyed them and used the thrill of discovery as a dramatic device to induce action. He might be speaking in synecdoche, reporting a book as read for the chapter or paragraph which really had been. But there was more to it than that. Not only his first readings but the episodes of his daily life have a recurrent quality. The philosophic old missionary back from a lifetime in the remote East, the brilliant ex-schoolmate engrossed in an eccentric specialism, the Oriental student elaborating arrangements for the pursuit of sex or lucre, the talented young scholar wasting away for want—these are regular *dramatis personae* of his letters who have their entrances and re-entrances but never their exits. Were these too lies? Some may indeed have been pure fictions and others have had real originals. All of them seem rather than lies to be fantasies, kinsmen to the imaginary playmates which lonely children create.

For with all his charm (and he was charming) and all his brilliant intellect (and he was brilliantly intellectual), what glares out from the Laski share of the letters was that he was psychotic. In creating such a character as his, nature outdid the supreme imaginations of literature. Its study is more fascinating than is any character in fiction. To the degree that curiosity is a livelier sentiment than reverence, Laski even commands a priority of interest as between these correspondents and relegates Holmes to second place. I pretend to no competence in the mental sciences but I cannot refrain from noting my untutored observations and drawing some conclusions.

A primary datum is father rejection. Falsely attributed to Holmes, it was manifestly present in Laski. This was apparently present in starkest form at one time. After his return to England he patched up an uneasy reconciliation with his family but his repugnance at the duty visits to Manchester is plain enough. The occasion for the crisis may have been his marriage to a non-Jew. How far that in itself was motivated by a rebellion against his father is an interesting question. The conflict was more basic than any episodic disagreement. He has an utter

aversion for Gladstone whom "my father worshipped." Disagreeing with Holmes, he has a low opinion of business men; his father was a business man. So fundamental is the matter that he rejects his whole racial group. It is ironic that Laski should have become for many the symbolic scapegoat of their unconfessed anti-Semitism. The situation is comparable to a prejudice against Luther on account of his having been born a Catholic. No one else of Hebrew lineage, so far as I know, ever quoted with zest the little jingle about "How Odd of God." Expostulating to Holmes's suggestion that he thinks he has observed agreeable traits of personality as characteristic of young Jews, Laski specifies objectionable racial attributes which hardly any Gentile would be keen enough to observe—although many will no doubt be ready enough to quote them (without crediting the source, naturally). The one time when he was vexed with Brandeis was when the latter was pursuing Zionist aspirations with more diligence than was convenient for the Labour government with which Laski was currently associated. Deeply as he was committed when the letters ended to the Socialist ideology, cordially as he viewed the Russian experiment, he retained throughout an antipathy to *étatisme*, to the inclusion of an economic general staff in the governmental structure, and remained a friend of individualism as against bureaucrats. If anyone could reconcile those attitudes logically, he was the one ingenious enough to do so. In any case, his rejection of the authoritarian solution was basic since it was an aspect of his fundamental father rejection. It is probably not too much to say that to that we are indebted, as an unexpected offshoot, for his perceptive analysis of the limitations of the expert in government and administration, a notion which the letters show him mulling over.

A single traumatic experience may have produced both the tendency to fantasy and the father rejection. The latter certainly had a dual consequence which is ordinary enough. There was a need for assertion and recognition of the ego and a yearning for a father substitute. The letters reveal both to a marked degree.

Reference has already been made to his impatience at having to hold his tongue on the Industrial Court and to his officious attempt to control the conclusions of his fellow-jurors. With the common man as a political conception, he will have no truck and has a constant scorn of Jefferson, who would equate the

dignity of individuals (and thus inferentially deny the superiority of Laski which Laski had to assert?). Never having been to Iowa, he scorns Iowans (which of course should though it does not make me dislike him). For that matter, he scorns Midwesterners with whom his sole contact has been a two day Chicago visit when he was twenty-one until at a later date he spends enough time in the Midwest to get acquainted when he falls to finding the ones he has met quite congenial. Indeed, such common men as he met he tended to like. He was forever busy-ing himself with miners' study groups and discovering quite phenomenal intellectual tastes and resources in those samplings of the laboring classes. He really enjoyed teaching (with the usual reservation as to examinations) but significantly his pleasure was in his relations with his students. He was captious of his colleagues and one would surmise may have been a fairly difficult associate. It will be noted that the contacts in which he experienced especial pleasure were those where his was the commanding role. The recognition of his superior status dissolved any antipathy he felt toward ordinary people, an antipathy not really to the people but to an apprehended pretension to equality.

Then, too, he did have a really warm and generous human nature. Whether his claimed transfer of the royalties he received to the beneficences alleged is fact or fantasy I know not but, even if the latter, the suggestion of what idealizations of his conduct he valued is significant. The eye that could catch and the hand that would record the beaming pride of three hundred parents at their youngsters' school exercises or the faded tears on the book Catherine de Medici was reading the day following the death of one of her bad brood are those of a warm-hearted man. Of another he comments, "He was a big man who only wanted a little feeling to be a great man." The noting it as a flaw itself tends to show that it was not his own failing.

"A great pope was lost in me. I have the dogmatic instinct," he said and Holmes once told him, ". . . you seem to be a trifle cocksure." But it was probably not true that he was self-assured. Rather he had an imperative need for self-assurance. Speaking of Pascal, he observed that he was not well born enough to succeed in the court "and his sense of intellectual superiority did not brook subordination" and of the high pretensions of small nations, "It isn't exactly complacency; some of it is whistling to

keep up their courage. But it goes down to the root of them"—two statements whose incisive acumen betokens the sympathy of one similarly situated. Nor could he satisfy himself by striving with pygmies. Obsessive preoccupation with de Tocqueville's and Bryce's studies of America and the reiterated discounting of the latter foreshadowed what did not come until after Holmes's death ended the correspondence, his own *The American Democracy*. In it he sought to demonstrate, it is generally thought unconvincingly, his right to a superior rank to Bryce as an interpreter of our culture. That he should make the attempt was the wholly predictable and even necessary result of his need for ego assertion if this reading of his character is justified.

The second compensation for his father rejection was his need for a father substitute. In all probability, their friendship commenced through his assignment of this role to Holmes, an assignment which continued as long as Holmes lived although after Laski's return to England he needed and found supplemental father substitutes closer at hand. Tentatives were made in the direction of Tawney but ultimately choice settled on the Webbs. It is a curious speculation where his thinking would have eventuated had he remained in America and under Holmes's primary influence instead of going to England and the orbit of the Webbs. For one with so compelling an ego, Laski was remarkably susceptible to the force of strong personalities. Sometimes this led him temporarily into enthusiasm for such weird characters as Oswald Mosley and Hjalmar Schacht and one wonders how much his bedazzlement by the personalities of Lenin and of Trotsky whom he described as "really big" may have lured him into admiration for their systems which were so fundamentally at odds with his anti-authoritarian bias.

Laski's career, the letters show, was a high tragedy in the classic Greek manner. Caught in psychic eddies and cross currents, he drifted inevitably to wreck. His subtle, original, and brilliant mind and his self-assertive disposition constituted an imposing superstructure of intellectual independence which rested on the shaky foundation of emotional dependence. He would not be mastered and could not be masterless. His allegiance could not be drafted but, once volunteered, his loyalties were intense and abiding.

The trend of his interests and attitudes while in the United States was essentially that of Holmes and of Frankfurter. After

leaving and increasingly as he remained in the magnetic field of the Webbs and their circle of British Labour intellectuals, they diverged. There remained much in common as to the problems to which the correspondents addressed themselves but different answers emerged because of fundamental disagreement as to the credible data for their solution and the appropriate inferences from the data. Both saw it. Holmes mentioned it first when he was moved to express serious reservations about the general assumptions of *A Grammar of Politics*. In his later letters are frequent regretful but explicit references to the now fully developed differences in their positions. Laski attempted no denial, refrained from raising the matter himself except when some impending new publication called forth an anticipatory defense, but stuck to his guns manfully against even the revered Holmes, variously arguing that Holmes was a theorist as contrasted with his own greater realism, that American and European conditions were so unlike as to present different issues and demand different solutions—any rationalization which could legitimize both conclusions and sustain a common basis of esteem. He never suggested and may have never surmised that he had new views because he had changed his source of supply.

What his conclusions would have been had they rested on his intrinsic impulses, we shall never know. Some might say there was so small a kernel of naturalness that the question is unreal. His sympathy was indeed regularly for the artificial, a trait already noted in discussing his esthetic preferences and revealed in a variety of remarks, for example that in French history he found the ultra-urbane eighteenth century more congenial than the brawling seventeenth. Yet under all the wrappings there was a real man and a lovable one. The warmth of his heart, the real kindliness of feeling for those with whom he had personal contact have been mentioned. Other aspects appear in a fervent outburst of patriotism when the first World War was going on, and in his later sturdy declaration that the unions (to which he was by now intimately bound) must be subordinated to the constitution rather than vice versa, if one had to go under. Here are reactions unusual in a Bloomsbury intellectual, impulses at odds with his environment. His unabated disparagement of Marx, too, while not exactly heresy in a Fabian, had a persistency and intensity which may have been partly rebellion against Marx, the socialist father figure, but partly also may have represented a grateful expression of his

own feelings in connection with one of the few options which his environing orthodoxies left open to him.

If the climate of opinion in which he elected to dwell was naturally uncongenial, he might be expected to shiver and turn blue with discomfort. Such a prognosis is confirmed by the letters. In his American phase, there was gayety and *élan* even in his condemnations. As that receded and he became affected by his newer associations, he became more and more pessimistic and at the end almost morbidly despondent. The period of the general strike in England which he saw as premonitory of a civil war is perhaps the first clear reflection of the change. On specifics, this gloomy view often enabled him to prophesy with uncanny prescience, as in his prediction that Spain would turn fascist and that India held within itself the seeds of the old Irish question. But it was not that he saw clearly, only that he saw bleakly and that when things turned out for the worst, as statistically some of them are bound to, the confirmation was rather of the particular vision than of the general powers of the seer. In general, things have not turned out so badly and, despite voices of alarm, probably will not turn out so badly as he anticipated. He expressed agreement with Holmes's disagreement with Spengler but apparently only rejected the premises while accepting the conclusion. For he, too, looking around him, saw an *Untergang des Abendlandes*. "... the foundations are being laid," he surmised, "of a position out of which, all over the world, there is no egress save through social conflict; and the price we may have to pay for that is hardly likely to be worth the results"; and again, "... that this civilization drifts chaotically to its destruction seems to me the inescapable implication of the facts. Its contradictions cannot be resolved without an overturn of its foundations." To this sense of grim upheaval and the notion that Russia was making the most conspicuous and adequate effort to achieve a workable adjustment, rather than to any liking for or belief in what was there occurring, may fairly be attributed his acquiescent appraisal of the Communist regime. His own fundamentally humane biases were at odds with the postulates of his current father substitutes. The strength of his mind enabled him to see those postulates more clearly than they. The strength of his loyalties compelled him to accept them although they were innately repugnant. Tortured by such tensions, the only escape was into a melancholia which colored all his judgments.

To suggest that the analysis is falsified by the unlikelihood that two such utterly unlike characters as the serene, integrated Holmes and the Hamletlike Laski, by me pictured, would experience a strong mutual attraction is to betray a misunderstanding of human relations and human friendship. There is no mystery about the reason for their strong attachment. For each of them the other filled a need. They had to have initially the qualities of intellectual penetration, a speculative philosophical bent, wide cultivation, a flair for discriminating observation and stylish expression, before either could answer the other's purpose. Those qualities both had. What remains is to consider in each case what the one required that the other supplied.

Laski's need has already been stated. It was for a father substitute. Could a grander choice than Holmes have been made? With a new setting, successors closer at hand had to be chosen, it is true. But Holmes, though retired as president, was retained as chairman of the board. Something of this traces to Laski's deeply loyal nature, something to his genius for recognizing and valuing quality.

Holmes progressed from casual initial courtesy to one introduced by a friend through the agreeable feeling any older person finds in a bright, attractive, and promising youngster who shares his own tastes and interests, to a relationship which virtually translated Laski into a symbol of life to which Holmes clung as he felt the substance of it slip from him. His responsibilities always measurably isolate a United States Supreme Court Justice and Laski's delicious prattle of the English scene which Holmes had once known personally and in which he was still interested though cut off from immediate personal contact partly redressed the loss so occasioned. But this was secondary. To the Holmes of these letters, time had an almost terrifying reality. He was old when the letters started and kept getting older. He was haunted by a sense of aging, by a fear of failing powers, by the reflection how much of his life was gone by and its corollary of how few tomorrows one could count on. Laski exorcised these. His steady stream of references to and sparkling anecdotes about contemporary figures and events made Holmes at second hand still a participant in daily living life. His explicit assurances most tenderly tactful and his continued discourse of matters intellectual on a level which implicitly assumed no impairment of faculties combated Holmes's apprehensions on that score. His was

a voice of life to one sitting in the presence of death. Holmes needed to hear that voice. Both seem to have been conscious of this. Holmes could and did chide Laski, could regret and disapprove Laski's new orientation on social judgments, but always in a context of regard and affection that showed him unwilling to let the rift become a gulf. Holmes knew, and Laski knew he knew, that many of Laski's accounts of reading or of people or of happenings were not objectively true, were as some have said lies. Yet these very inventions were spread before Holmes as part of the process of amusing and interesting him. They were probably fabricated in undiscoverable proportions for that very deliberate purpose. Often enough one observes Laski writing under evident harassment and strain but not neglecting to have for Holmes the shining baubles of gossip, the delicate gifts of witty comment on books and ideas which might beguile his fancy. It calls for a sterner morality than I find decent to condemn him for having cheated truth in order so faithfully to serve friendship.

This is a remarkable record of a remarkable friendship. This is a self-portrait of two tremendous characters. This is a picture juxtaposing the golden sunset of a perfect June evening and the turbulent dawn of a gusty March day. This is the complete drama of the men, events, and ideas of America and Britain from the end of the first World War to the beginnings of the depression as reported by first rate men with front row seats. To lawyers it has particular interest because written by men of the law and in significant part about men and books of the law. But, lawyer or non-lawyer, either you read this book or you miss the most absorbing reading experience of recent years.

APPENDIX

It would not be right to omit mention of how superbly well the editor has done his job. A footnote would be too meager recognition, there seemed no way to work it into the text without interrupting the continuity, and so I take this form of rendering my tribute. In ascending order of importance, the following deserve comment: (1) His patience and industry in transcribing the huge mass of almost undecipherable holographic manuscript; (2) his unexampled erudition in being acquainted with the legion of authors and incidents, some famous, some obscure, to whom or which the correspondents allude and giv-

ing footnote or other background for the benefit of those of us who are less extensively informed. (I say "being acquainted" advisedly, for whoever knows Professor Howe knows that he and perhaps only he could make the identifications out of acquaintance and not out of encyclopedia rummaging); (3) above all, his humor which glances slyly out of many of the footnotes (not a common quality in footnotes) of which I give this one sample, "Aimee Semple McPherson (1890-1944); sensational in faith, in manner, and in personal life, her great successes, *not surprisingly*, were in Los Angeles." (Italics supplied.) See also notes pages 206, 292, 351, 472, 513, 613, 792, 940, 1175, 1384 and Biographical Appendix, *passim*. Here, friends, is the Yankee to do for us "the old Yankee."

Albert S. Abel*

LAW AND THE FARMER, by Jacob H. Beuscher. Springer Publishing Company, New York, New York, 1953. Pp. 406. \$4.95.

Professor Beuscher, a member of the law faculty of the University of Wisconsin, is ideally suited for the presentation of farm law materials. He has been a member of the Wisconsin Bar since 1930 and has taught courses dealing with Land Use, Mortgages, and Sales of Land for a number of years. His interest in farm law and its dissemination is not unusual in the light of agricultural activities in the State of Wisconsin, one of the great agricultural communities in the world. The book is the first of its kind in the field, and its preparation involved the interesting and difficult task of examining the law of contracts, torts, partnerships, corporations, personal property, mortgages, descent and distribution, wills, taxes and the like and extracting and developing that portion thereof which is peculiar to the farmer. The larger task, and that which is done with the craftsmanship of a master, however, is that of reducing this vast, complicated body of law to the understanding of the lay reader. Professor Beuscher conceived of this work as filling a need for those persons related to the farm, who are not lawyers but quite necessarily, due to the legal complexities of modern agriculture coupled with an ever-enveloping network of governmental regulations and statutes, feel a tremendous need for legal knowledge specifically related to the farm. The

* Professor of Law, West Virginia University.